contestant has done at least that, the proponent need take no step to meet the issue of undue influence. The burden being on contestant in the first instance, it should remain with him to the end. And it must so remain with him unless some artificial value is given to the presumption arising from the relationship. To give such a value to the presumption is not only unjustifiable from the standpoint of logic, but is unwarranted from the standpoint of practical life. We may require such a relationship to be explained, but it is an unreasonable deduction from experience and a disregard of the motives which may prompt testamentary benefactions to say that the relationship when explained should lead to any artificial results.[17] This the court, in the Kirby case, apparently realizes, for it speaks of this presumption as a *prima facie* presumption which may be rebutted. If this is true it is difficult to see how the ultimate burden of proof can rest upon the beneficiary who has by proper evidence rebutted the *prima facie* presumption of undue influence.

Public policy may perhaps require, and experience may perhaps justify, the strict rule that a beneficiary enjoying confidential relations with the testator should explain his conduct even though he may have had no connection with the making of the will. But even if this rule, which seems unduly strict, be followed, it is respectfully suggested that the requirement of such explanation does not change the burden of proof. The burden of proof remains upon the contestant throughout.

C. E. C.

AFFECTING QUALITY OF THE NATURAL PRODUCT WITHOUT ADULTERATION IN THE SENSE OF THE FOOD AND DRUGS ACT

Under a statute providing that "no person shall sell . . . any article of food . . . not of the nature, substance and quality demanded," and regulations providing that "where a

[17] The jury may, in considering the evidence, draw *inferences* ("presumptions of fact") from the relationship. The *presumption* ("presumption of law") should drop out with the production of evidence just as does the presumption of sanity. While the facts giving rise to the presumption of undue influence may justify inferences of fact, the facts giving rise to the presumption of sanity would not ordinarily justify any inferences, since the presumption of sanity rests on the basis that most people are sane and in a particular case where sanity is questioned an inference from the sanity of others would not be justified. But the effect of the *presumption* should be the same in either case.

sample of milk contains less than 3 per cent of milk fat it shall be presumed . . . until the contrary is proved, that the milk is not genuine," a farmer is prosecuted for selling milk testing below standard; the milk proves not to have been tampered with since the milking, but the cows have intentionally been fed green, washy, quantity-producing fodder.[1] It was held, with Bray and Scrutton, JJ. dissenting, that the conviction should be quashed, as the milk is genuine. The dissent followed *Smithies v. Bridge*,[2] where a majority of the court held that the milk of a cow not milked at the proper time, and for that reason deficient in fats, was not of the nature, substance and quality of milk; *quality*, when unspecified, they define as "merchantable quality," and consider its presence a question of fact. The majority, adopting *Scott v. Jack*,[3] hold that an unadulterated thing is genuine and not within the act; *adulterated*, as to milk, means mixed with another substance, or minus any part of the original constituents, so as in either case to affect injuriously the quality, nature or substance.[4]

Our own courts do not extend adulteration so far. An article shall be deemed adulterated where any substances are mixed with it so as to injuriously affect it;[5] or, in Michigan, if it is an imitation of or sold under the name of another article, or if it contains any added substance or ingredient which is poisonous or injurious to health.[6] Whether "imitation" could be construed to include, *e. g.*, even milk or flour from which some of the nourishing constituents had been abstracted, is a question. The Federal courts, as well, would seem in the Coca Cola Case to accord with the restriction set by the English decision: an article of food other than confectionery is not to be deemed adulterated merely because it contains poisonous or deleterious ingredients, unless such ingredients have been added, and are foreign to the natural or normal composition of the article.[7] If the natural presence of actively harmful elements is not adulteration, the mere natural absence of nourishing elements will scarcely be held so.

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[1] *Hunt v. Richardson*, 115 L. T. (K. B. D.) 114.
[2] (1902) 2 K. B. 13.
[3] (1912) 49 Sc. L. R. 989.
[4] Act of 1899, § 1, subsec. 7.
[5] *Small & Co. v. Commonwealth*, 120 S. W. (Ky.) 361.
[6] Mich. Comp. Laws, § 5012.
[7] *U. S. v. 4 Barrels and 20 Kegs of Coca Coca Cola*, 191 Fed. 431.

Regulation of food sales seems generally regarded as aiming at the protection of the public from imposition. Cheats as to the substance sold are met by statutes on adulteration, branding, and coloring[8]—not always too successfully.[9] Cheats as to grade are properly fought by setting standards of quality. But there regulation stops; Georgia will not permit a municipality to go on and prohibit the sale of a "valuable and useful commodity" for being below the standard set, as ice cream containing less than the required percentage of butter fats.[10] This same idea of protection from imposition only, seems at the bottom of the majority decision in the principal case; so, too, with the New York provision that if the herd sample be as deficient as the sample tested, there shall be no prosecution.[11] But beyond warning the public of defective commodities, is it not within the legitimate scope of food regulation to take active steps to keep them out of the market? Wisconsin, at least, has taken such a step in enacting that milk containing less than 3 per cent milk fats is, flatly, adulterated;[12] and the court, in interpretation of this enactment, acts with a rigor beyond that even of the Legislature.[13]

K. N. L.

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[8] Food and Drugs Act.

[9] *People v. Fried,* 133 App. Div. (N. Y.) 889; *State v. Hanson,* 136 N. W. (Minn.) 412.

[10] *Rigbers v. City of Atlanta,* 7 Ga. App. 411.

[11] Consol. Laws Ch. 1, § 35.

[12] St. 1898, § 4607.

[13] *Splinter v. State,* 140 Wis. 567.